

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Nakano and Correa Analyst: Roger Lackey Bill Number: AB 1875

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 04-23-2002

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Corporations/Certificate of Dissolution

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended March 7, 2002.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED March 7, 2002, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would allow certain corporations to dissolve without obtaining a tax clearance certificate.

SUMMARY OF AMENDMENTS

The April 23, 2002, amendments added an additional requirement that if a corporation received payments on subscriptions for shares from investors, those payments must be returned to the investors.

The remainder of the department's analysis of the bill as amended March 7, 2002, still applies. As requested by the author's staff, amendments have been included to resolve the implementation considerations included in the department's prior analysis. The implementation considerations and the related amendments are included below.

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

This bill would require that the Certificate of Dissolution be filed in the same taxable year as the filing of the articles of incorporation. In certain instances, a corporation may have a short taxable year

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

5/7/02

(less than 12 months). As a result, the taxable year may close before the corporation would be able to file its Certificate of Dissolution, thereby leaving the corporation ineligible to file for dissolution under this bill. Amendment 1 would allow a corporation 12 months from the date it filed its articles of incorporation to file its Certificate of Dissolution.

Existing corporate dissolution statutes expressly require that the “tax liability” of a dissolving corporation either be paid or be assumed by another business entity or individual. This bill requires that only the “debts and liabilities” of a dissolving corporation be paid, secured, or assumed. The bill does not use the precise term “tax liability.” Amendment 2 would add a requirement that the “tax liability” have been paid or assumed as a condition of dissolution.

It is suggested that the bill include an express requirement that a final franchise tax return be filed at the time of dissolution. Such a requirement would ensure that the dissolving corporation files the necessary franchise tax return identified as a final return to give notice to the department that the entity intends to dissolve. Amendment 2 would require the corporation to file a final franchise return as a condition of dissolution.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1875
As Amended April 23, 2002

AMENDMENT 1

On page 2, strikeout lines 9 to 11 inclusive, and insert:

(1) That the certificate of dissolution is being filed within 12 months from the date the articles of incorporation were filed.

AMENDMENT 2

On page 2, line 24 after "(3)" insert:

That the tax liability will be satisfied on a taxes paid basis or that a person or corporation or other business entity assumes the tax liability, if any, of the dissolving corporation and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.

(4) That a final franchise tax return has been filed with the Franchise Tax Board as required under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code).

*****Leg Counsel, please renumber the remaining paragraphs as necessary.*****